

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 FUTUREWISE,

6
7 Petitioner,

Case No. 17-2-0007

8 v.

FINAL DECISION AND ORDER

9
10 CITY OF RIDGEFIELD,

11 Respondent,

12 And

13
14 RDGB ROYAL FARMS LLC, RDGK REST
15 VIEW ESTATES LLC, RDGM RAWHIDE
16 ESTATES LLC, RDGF RIVER VIEW
17 ESTATES LLC, AND RDGS REAL VIEW LLC,

18 Intervenors.
19

20
21 **SYNOPSIS**

22 *Futurewise (Petitioner) challenged City of Ridgefield (City) Ordinance No. 1229. The*
23 *Board concluded that the Petitioner failed to carry its burden of proof demonstrating the City*
24 *violated the Growth Management Act (GMA) regarding UGA expansions, agricultural land*
25 *de-designations, and reasonable measures to concentrate urban densities.*
26

27 **I. INTRODUCTION**

28 This case, involving the City of Ridgefield, is intertwined with Clark County's (County)
29 2016 Comprehensive Plan (CP) update because as counties adopt population projections
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1 and determine urban growth areas (UGA), they coordinate with cities in their jurisdictions.¹
2 In this case, the County's land use and population allocation decisions determined, in part,
3 the City's population and density projections.² The County and the City worked together to
4 establish consistent planning assumptions and policies regarding those projections. Thus,
5 since 2015, as the City updated its CP and adopted ordinances to implement the CP, the
6 City relied upon the County's population projections and land use planning assumptions.
7

8 Petitioner challenges City Ordinance 1229 claiming the City's decisions on UGAs,
9 agricultural land, population densities, buildable lands and reasonable measures do not
10 comply with the GMA.³ In a 2016 case before this Board (GMHB No. 16-2-0005c), the same
11 Petitioner challenged Clark County's Comprehensive Plan update regarding similar issues.⁴
12

13 To put this case into historical perspective, the Board will briefly describe the County
14 and City actions leading to the present case. In June 2015, the County adopted its 2015
15 Buildable Lands Report (BLR) showing how much land had been developed and how much
16 land was needed to accommodate the 2035 projected residential and employment
17 population increase.⁵ For the City, the County's 2015 BLR indicated the City had a 280 acre
18 surplus of land necessary to accommodate the residential needs of the projected population
19 growth of 13,087 persons by the year 2035.⁶ However, during the development of the BLR,
20 the County received correspondence from the City explaining why its actual development
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24 ¹ RCW 36.70A.040 and 36.70A.110.

25 ² City of Ridgefield Hearing Brief (September 12, 2017) at Tab County Comp Plan and Tab County Resolution.

26 ³ Futurewise's Petition for Review of Comprehensive Plan and Development Regulation Amendments (June 1, 2017) at 2-4.

27 ⁴ *CCCU, et al. v. Clark County*, GMHB No. 16-2-0005c (Friends of Clark County's & Futurewise's Petition for
28 Review, June 20, 2016); GMHB No. 16-2-0005c (Clark County Citizens United, Inc. Petition for Review,
29 August 25, 2016). See also GMHB No. 16-2-0005c (Order of Consolidation, Order on Intervention, and Notice
30 of Hearing and Preliminary Schedule, September 6, 2016).

31 ⁵ Futurewise's Prehearing Brief at IR 047, Buildable Lands Report (June 2015) at 5, Baseline Assumptions:
32 The 2007 Comprehensive Plan planning assumptions have to do with the growth rates, population and person
per household and are listed below: ...Average residential densities in urban areas would be ...6 units for
Ridgefield..."

⁶ *Id.* at IR 047. June 2015 Buildable Lands Report (BLR) at 9. See Table 3: 2035 Urban Growth Residential
Land Need.

1 patterns did not produce a surplus of land.⁷ Consequently, about a year later, on March 1,
2 2016, the County adopted County Resolution 2016-03-01 which repealed the City's original
3 2015 BLR population projections and amended upward the City's population projections.⁸
4 In this same action, the County included a note in that Resolution stating "the expansion
5 request includes additional acreage for Ridgefield's UGA."⁹ On April 1, 2016,¹⁰ with the
6 upwardly revised population projections, the City's 2016 CP became effective and changed
7 the "remaining population projections for planning horizon 2035" from 13,087 to 18,919.¹¹
8 The City's UGA, however, had not yet been expanded by the County; this occurred later
9 during the County's CP update.
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14 ⁷ *Id.* at IR 047 at 45-46. See City of Ridgefield Correspondence (Email, May 8, 2015) stating the County's BLR
15 showed surplus acres, but for various reasons, the City will not have a land surplus: "Ridgefield knows of 444
16 single and multifamily lots that will be coming forward within a year for final plat...lots have already been
17 committed to development and should not be calculated and vacant and buildable in the County's report...City
18 requires 25% of residential land be committed to park and open space...Ridgefield's UGA has already been
developed as large lot subdivisions under County standards... the market for single family development has
moved more quickly than multifamily development."

19 ⁸ City of Ridgefield Prehearing Brief (September 12, 2017) at Tab County Resolution 2016-03-01. See Table 2.
20 Ridgefield's new population projections became 18,919 (this is the increase from 2015-2035) and showing a
21 total 2035 population of 25,494. The 25,494 population projection is reflected in the City's 2016 Updated
22 Comprehensive Plan (See Futurewise's Prehearing Brief Tab Comp Plan at 8). See also Hearing on the
23 Merits (HOM Transcript) at 8-14. City of Ridgefield Attorney Ms. Parker stated: "And this is a resolution of
24 Clark County that actually changed the planning assumptions....So in your packet is a signed copy of that
25 resolution. It's Resolution 16.03.01. And it was adopted by Clark County and because it affects the planning
assumptions and what population the City has to plan for..." [The City asked the Board to take official notice of
County Resolution 2016-03-01. The Board took official notice of County Resolution 2016-03-01 at the HOM.]

26 ⁹ *Id.* Tab County Resolution 2016-03-01. See Table 2 Population and Employment Allocation and See "NOTE:
... March 3, 2015 expansion request includes additional acreage for Ridgefield's UGA – 832
persons." (Emphasis added).

27 ¹⁰ See HOM Transcript at 24: "Ms. Parker: Jeff Knight with the City has actually been able to look those up
28 during the interim. The City's 2016 Comprehensive Plan was adopted by Ordinance 1203. It was second
reading on February 25th of 2016. And it became effective on April 1st of 2016."

29 ¹¹ Futurewise's Prehearing Brief at Tab Comp Plan. For complete understanding of the population projection
30 changes, see HOM Transcript at 8-14 and Futurewise's Prehearing Brief IR 047 Buildable Land Report at 10.
31 The BLR Table 4 uses a category of "remaining population projections for planning horizon 2035". The
32 population projection in the original BLR was 13,087 for Ridgefield. However, with County Resolution 2016-03-
01, the County, and then the City, increased this projected population to 18,919. However, the *overall City*
population was increased to 25,494 in County Resolution 2016-03-01. See City of Ridgefield Hearing Brief at
Tab County Resolution.

1 In June 2016, the County updated its CP through Amended Ordinance 2016-06-12
2 and, among other actions taken, the County expanded the City's Urban Growth Area.¹² As
3 noted *supra*, Petitioner in this case, challenged the County's expansion of the City's UGA by
4 appealing the CP Update.¹³ This Board found the County's "UGA enlargements violated
5 RCW 36.70A.110 and RCW 36.70A.115 and found the County's and City's' failure to adopt
6 "reasonable measures" to remedy density inconsistencies violates RCW 36.70A.215."¹⁴
7 The Board invalidated the County's action expanding Ridgefield's UGA.¹⁵ The Board's
8 decision was appealed and is now pending in the Court of Appeals.¹⁶

9
10 In July 2016, Intervenors in this case -- whose 111 acres are located in the recently
11 expanded Ridgefield UGA -- entered into a development agreement with the City; the
12 development agreement was signed and recorded on October 6-7, 2016.¹⁷ In September
13 2016, the City adopted Ordinance 1216 annexing Intervenors' 111 acres and zoned the land
14 6 dwelling units per acre. As mentioned above, the City's annexation into the newly
15 expanded UGA was based on County Ordinance 2016-06-12 which expanded the City's
16 UGA boundaries.¹⁸

17
18 On April 13, 2017, the City adopted challenged Ordinance 1229 which altered
19 several aspects of the newly annexed 111 acres: the zoning was lowered from 6 to 4
20 dwelling units per acre, the CP land use designation and maps were changed as well as the
21 zoning maps and the Capital Facility Plan (CFP).¹⁹ Petitioner filed an appeal with this Board
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26 ¹² See *CCCU, et al. v. Clark County*, GMHB No.16-2-0005c, in which Clark County adopted Amended
Ordinance 2016-06-12 (June 28, 2016) to update their CP.

27 ¹³ See *CCCU, et al. v. Clark County*, GMHB No. 16-2-0005c (Friends of Clark County's & Futurewise's Petition
for Review, June 20, 2016).

28 ¹⁴ *CCCU, et al. v. Clark County*, GMHB No. 16-2-0005c (Final Decision and Order, March 23, 2017) at 23-24.

29 ¹⁵ *Id.* at 99 "**Determination of Invalidity** The particular parts of the [County] Comprehensive Plan that are
30 determined to be invalid are as follows:...3. The expansions of the Urban Growth Boundary for the City of
Ridgefield shown on the 2016 Comprehensive Plan map...."

31 ¹⁶ Court of Appeals, Div. II, Case No. 508478 (June 23, 2017).

32 ¹⁷ Tab IR 200 attached to Intervenors' Brief.

¹⁸ Futurewise's Prehearing Brief at Tab Ord. 1216.

¹⁹ Hearing on the Merits Handout with complete Ordinance 1229 with correct appendices.

1 on June 1, 2017, challenging Ordinance 1229.²⁰ Procedural matters relevant to the case
2 are detailed in Appendix A.

3 4 **II. BOARD JURISDICTION**

5 The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290
6 (2). The Board finds the Petitioner has standing to appear before the Board, pursuant to
7 RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board also finds it has
8 jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).
9

10 **III. STANDARD OF REVIEW**

11 Comprehensive plans and development regulations, and amendments to them, are
12 presumed valid upon adoption.²¹ This presumption creates a high threshold for challengers
13 as the burden is on the Petitioner to demonstrate that any action taken by the City is not in
14 compliance with the GMA.²² The Board is charged with adjudicating GMA compliance and,
15 when necessary, invalidating noncompliant plans and development regulations.²³
16

17 The scope of the Board's review is limited to determining whether a city has achieved
18 compliance with the GMA only with respect to those issues presented in a timely petition for
19 review.²⁴ The Board is directed to find compliance unless it determines that the challenged
20 action is clearly erroneous in view of the entire record before the Board and in light of the
21 goals and requirements of the GMA.²⁵
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27 ²⁰ Futurewise's Petition for Review of Comprehensive Plan and Development Regulations Amendments (June
28 1, 2017).

29 ²¹ RCW 36.70A.320(1).

30 ²² RCW 36.70A.320(2).

31 ²³ RCW 36.70A.280, RCW 36.70A.302.

32 ²⁴ RCW 36.70A.290(1).

²⁵ RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be "left with the firm
and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201*
(1993).

IV. ANALYSIS AND DISCUSSION

Issue No. 1:

Did the adoption of Ordinance No. 1229 repealing the Urban Holding 10 overlay comprehensive plan designation and zone from the 2016 Ridgefield urban growth area (UGA) expansion, adopting an Urban Low Density Residential Comprehensive Plan designation, and amending the zoning from Residential Low Density 6 (RLD-6) to Residential Low Density 4 (RLD-4) violate RCW 36.70A.020(1), (2), (4); RCW 36.70A.070 (internal consistency); RCW 36.70A.100; RCW 36.70A.110(1), (2), (3); RCW 36.70A.115; RCW 36.70A.130(1), (3); RCW 36.70A.210(1), (2), (3); RCW 36.70A.215(1), (3), (4); or Clark County Countywide Planning Policies 1.1.2, 1.1.3, 1.1.6, 1.1.9, 1.1.12, 1.1.13, 1.1.15, 1.1.16, or 2.1.6 because the UGA expansion and residential comprehensive plan designation and zoning were not needed to accommodate the planned growth, the permitted densities are inconsistent with the countywide planning policies, and reasonable measures were not adopted and implemented?

Issue No. 2:

Did the City of Ridgefield's failure to conduct a county-wide or area-wide analysis of whether the 2016 Ridgefield UGA expansion should be designated as agricultural lands of long-term commercial significance as part of the adoption of Ordinance No. 1229, the failure of Ordinance No. 1229 to designate these lands as agricultural lands of long-term commercial significance and adopt a consistent comprehensive plan designation and zone, Ordinance No. 1229's repeal of the Urban Holding 10 overlay comprehensive plan designation and zone, Ordinance No. 1229's adoption of an Urban Low Density Residential Comprehensive Plan designation and Residential Low Density 4 (RLD-4) zone for the 2016 Ridgefield UGA expansion, and Ordinance No. 1229's failure to adopt policies and regulations protect adjacent natural resource lands violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.040(3)(b); RCW 36.70A.050(3); RCW 36.70A.060(1)(a), (3); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.210(1), (2), (3); WAC 365-190-040(8)(d), (9), (10)(b), (12); WAC 365-190-050, Clark County Countywide Planning Policies 3.0.2 or 4.1.2; or the Ridgefield Development Code (RDC) including RDC 18.320.030 and RDC 18.320.050?

Issues not briefed are deemed abandoned

In Issue 1, Petitioner failed to provide legal argument supporting its alleged violations of RCW 36.70A.020 (1), (2), (4); .070 and .100. Those unbriefed issues are deemed abandoned.²⁶ Petitioner also failed to provide legal arguments regarding Clark County

²⁶ WAC 242-03-590(1) Failure by such a party to brief an issue shall constitute abandonment of unbriefed issues.

1 Countywide Planning Policies (CPPs) 1.1.2, 1.1.3, 1.1.6, 1.1.12 and 2.1.6 and those
2 unbriefed policies are also deemed abandoned.²⁷ For Issue 2, Petitioner failed to brief
3 several GMA statutes and administrative codes referenced in its Issue statement. Those
4 unbriefed issues are deemed abandoned.²⁸ Petitioner also failed to provide legal
5 arguments regarding Clark County CPP 3.0.2 and 4.1.2. Those unbriefed issues are also
6 deemed abandoned.²⁹
7

8 **Claims about UGA size and Agricultural Land De-Designation are dismissed**
9

10 Petitioner argues Ordinance No. 1229 violates the GMA because the UGA expansion
11 was not necessary to accommodate the allocated population and the City and County failed
12 to conduct a county-wide or area-wide analysis of agricultural lands which Petitioner claims
13 still qualify as Agricultural Lands of Long-Term Commercial Significance (ARL).³⁰ Under
14 Issues 1 and 2, Petitioner asserts that the 2016 UGA expansion for the City of Ridgefield,
15 along with Clark County's de-designation of former ARL, violated the GMA.³¹ The Board
16 notes that RCW 36.70A.110 establishes that UGAs are formally adopted by the County
17 legislative body, after consultation with its cities. Also, the Board notes that RCW
18 36.70A.060 and WAC 365-190-050³² authorize counties to designate or de-designate
19 agricultural lands. Petitioner's challenge of Clark County's actions on the City's UGA (and
20 attendant ARL de-designation) were previously considered and decided in GMHB No. 16-2-
21 0005c. Petitioner cannot raise in the present case additional challenges of Clark County's
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25 ²⁷ *Id.*

26 ²⁸ WAC 242-03-590(1) Failure by such a party to brief an issue shall constitute abandonment of unbriefed
27 issues.

28 ²⁹ *Id.* Statutes not briefed: RCW 36.70A.020(8); RCW 36.70A.040(3)(b); RCW 36.70A.050(3); RCW
29 36.70A.060(1)(a), (3); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.100; RCW 36.70A.120; RCW
30 36.70A.130(1), (3), (5); RCW 36.70A.210(1), (2), (3); WAC 365-190-040(8)(d), (9), (10)(b), (12); WAC 365-
31 190-050, Clark County Countywide Planning Policies 3.0.2 or 4.1.2.

32 ³⁰ Futurewise's Prehearing Brief (August 18, 2017) at 3, 8, and 11 and Futurewise's Petitioner's Reply Brief
(September 26, 2017) at 1.

³¹ *Id.*

³² RCW 36.70A.060 Natural resource lands and critical areas—Development regulations. WAC 365-190-050
Agricultural resource lands. (1) In classifying and designating agricultural resource lands, counties must
approach the effort as a county-wide or area-wide process.

1 GMA actions. This case is limited to a challenge of the City of Ridgefield's Ordinance 1229
2 only, which amended the City's CP land use designations, CP and zoning maps, and its
3 Capital Facility Plan on 111 acres recently annexed by the City. Accordingly, all arguments
4 relating to actions taken by Clark County cannot be considered by the Board in this case
5 and must be dismissed.
6

7 **Urban Densities and Reasonable Measures**

8 **Applicable Law:**

9 **RCW 36.70A.215 (1), (3), (4) Review and evaluation program.**

10 (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in
11 consultation with its cities, countywide planning policies to establish a review and
12 evaluation program. This program shall be in addition to the requirements of RCW
13 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the
14 review and evaluation program required by this section, the county and its cities shall
15 consider information from other appropriate jurisdictions and sources. The purpose of
16 the review and evaluation program shall be to: (a) Determine whether a county and
17 its cities are achieving urban densities within urban growth areas by comparing
18 growth and development assumptions, targets, and objectives contained in the
19 countywide planning policies and the county and city comprehensive plans with
20 actual growth and development that has occurred in the county and its cities; and (b)
Identify reasonable measures, other than adjusting urban growth areas, that will be
taken to comply with the requirements of this chapter.

21 (2) The review and evaluation program shall: (a) Encompass land uses and activities
22 both within and outside of urban growth areas and provide for annual collection of
23 data on urban and rural land uses...

24 (3) At a minimum, the evaluation component of the program required by subsection
25 (1) of this section shall: (a) Determine whether there is sufficient suitable land to
accommodate the countywide population projection established for the county ...

26 (4) If the evaluation required by subsection (3) of this section demonstrates an
27 inconsistency between what has occurred since the adoption of the countywide
28 planning policies and the county and city comprehensive plans and development
29 regulations and what was envisioned in those policies and plans and the planning
30 goals and the requirements of this chapter, as the inconsistency relates to the
31 evaluation factors specified in subsection (3) of this section, the county and its cities
32 shall adopt and implement measures that are reasonably likely to increase
consistency during the subsequent five-year period. If necessary, a county, in

1 consultation with its cities as required by RCW 36.70A.210, shall adopt amendments
2 to countywide planning policies to increase consistency. The county and its cities
3 shall annually monitor the measures adopted under this subsection to determine their
4 effect and may revise or rescind them as appropriate.

5 Petitioner claims the City "is not achieving the residential density standards adopted
6 by the Clark County CPPs... [and] the *Buildable Lands Report* documents inconsistencies
7 between actual growth and the City's GMA planning."³³ Petitioner argues that when
8 Ordinance No. 1229 downzoned the City's 2016 UGA expansion from Residential Low
9 Density 6 (RLD-6) to Residential Low Density 4 (RLD-4),³⁴ the residential density was
10 reduced from six to four dwelling units per acre.³⁵ Petitioner argues because densities in
11 CPP 1.1.13 require the City to "have ... densities ... averaging at least 6 units per net
12 residential acre (4.5 gross units per acre), the City created an inconsistency between CPP
13 and its zoning."³⁶ Petitioner asserts that CPP 1.1.9 requires the County and its cities to use
14 the BLR to determine if their targeted densities for population growth have been met and, if
15 the targets and actual growth are inconsistent, then the jurisdictions must correct the
16 inconsistencies by adopting reasonable measures to increase density.³⁷

17
18 Petitioner makes two final claims. First, it references GMHB No.16-2-0005c and
19 states that the "City of Ridgefield was aware of the Board's finding that "the County's and
20 Cities' failure to adopt 'reasonable measures' to remedy density inconsistencies violates
21

22 ³³ Futurewise's Prehearing Brief at 5.

23 ³⁴ *Id.* at 5 City of Ridgefield Ordinance No. 1216 at 3, in Tab Ord. 1216; IR 052, Ordinance No. 1229 City of
24 Ridgefield Zoning [map] in Tab Ord. No. 1229 of the Futurewise Petition For Review.

25 ³⁵ Futurewise's Prehearing Brief at 5 and See Petitioner's exhibits in Tab RDC Ridgefield Development Code
26 Table 18.210.040-1.

27 ³⁶ *Id.* at 6 See *Clark County Comprehensive Growth Management Plan 2015 – 2035* p. 43 in Tab Co Comp
28 Plan 2015 requiring 6 Du/acre. See HOM transcript at 59 In response to Board questions about why
29 **averaging** to 6 du/acre was non-compliant with GMA, Petitioners explained the even with the City's attempts
30 to increase density, the average of 6 units per acre is not met, that the average density is actually 5.2 du/acre:
31 "PRESIDING OFFICER CARTER: So why is it -- why isn't it okay for the City to average this? They have an
32 average density of six units across the whole city, and their UGA areas that -- that they've annexed. MR.
TROHIMOVICH: The problem is both based on the Decker email and the Buildable Lands Report, it doesn't
average to six. It's less than that. The Buildable Lands Report body says it's 5 point – it averages to 5.2 units
per acre. And the Decker information shows that for those subdivisions, it's way lower than that." PRESIDING
OFFICER CARTER: Okay. So the 5.2 is an average. MR. TROHIMOVICH: Yes."

³⁷ Futurewise's Prehearing Brief at 6 and Tab County Comp Plan 2015-2035 at Land Use Element at 42.
See also IR 047 at 5-7 *Clark County Buildable Lands Report* at 38 – 40 (June 2015).

1 RCW 36.70A.215.”³⁸ Second, Petitioner argues the City’s reasonable measures are not
2 what they seem; upon close reading of the development regulations, Petitioner claims they
3 are optional and permissive.³⁹

4 In response, the City counters that Ordinance 1229 did not adopt reasonable
5 measures, but was solely focused on zoning maps and capital facilities for the 111 annexed
6 acres.⁴⁰ The City states it adopted reasonable measures in various development
7 regulations in 2013 to increase density⁴¹ and in 2016, the City asserts it adopted sub-area
8 plans for two commercial areas allowing residential use and new optional mixed-use
9 overlays for higher densities.⁴² As to the question of averaging, the City responded at the
10 HOM that the City’s CP adopted an average of six dwelling units per acre and assigned a
11 range of densities throughout the city to accomplish that requirement. ⁴³

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14 ***Board analysis of urban densities and reasonable measures within Ridgefield***

15 RCW 36.70A.215 (1) requires a “county... in consultation with its cities... to establish
16 a review and evaluation program... the purpose ...shall be to: (a) Determine whether a
17 county and its cities are achieving urban densities within urban growth areas by comparing
18 growth and development assumptions, targets, and objectives contained in the countywide
19 planning policies and the county and city comprehensive plans with actual growth and
20 development that has occurred in the county and its cities; and (b) Identify reasonable
21 measures, other than adjusting urban growth areas, that will be taken to comply with the
22 requirements of this chapter.” If an inconsistency exists, then “reasonable measures” must
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26 ³⁸ *Id.* at 7. *CCCU, et al. v. Clark County*, GMHB No. 16-2-0005c (Final Decision and Order, March 23, 2017),
27 at 24 bold in the original, while this aspect of the Clark County Citizens United, Inc. decision has been
28 appealed, it is still in effect and is good law; Ordinance No. 1229 at 3 and attachments in Tab Ord. No. 1229 of
29 the Futurewise’s Petition For Review (June 1, 2017).

30 ³⁹ *Id.* at 4 “Further the RMOU is “optional” and has to be initiated by the property owner as part of a master
31 planning process. So, the effectiveness of the RMOU and the subarea plans have yet to be demonstrated.”

32 ⁴⁰ City of Ridgefield Hearing Brief at 5.

⁴¹ *Id.* at 11. See also Tab RMC, at 3-5; 19, and 23, respectively, Ridgefield Municipal Code, Development
Regulations.

⁴² *Id.* at 11 IR 003, at 2-3, 2016 Ridgefield Comprehensive Plan update, Tab Comp Plan of Futurewise’s
Prehearing Brief. See also Tab RMC, at 11-12, Ridgefield Municipal Code, Development Regulations.

⁴³ HOM Transcript at 84.

1 be taken to “increase consistency during the subsequent five-year period.”⁴⁴ This statute
2 prescribes a three step process as follows:

3 Step 1: The County, in consultation with its cities, must adopt CPPs to establish a
4 review and evaluation program, the purpose of which is to determine whether urban
5 densities are being achieved within the County’s UGAs and, if not, to identify reasonable
6 measures to comply with the GMA, other than adjusting urban growth areas.
7

8 Step 2: : One year prior to the statutory deadline to review and update
9 comprehensive plans, complete the look back “Evaluation” by comparing **actual housing**
10 **density observed** to **planned housing density** adopted in the previous comprehensive
11 plan.

12 Step 3: If the Evaluation demonstrates an urban density inconsistency, then the
13 county and the city(ies) shall adopt and implement measures reasonably likely to increase
14 consistency during the subsequent five-year period, other than adjusting urban growth
15 areas.
16

17 The Board notes the language and context of RCW 36.70A.215 anticipates that the
18 “Evaluation” for urban density consistency shall occur periodically (not annually). The timing
19 of the RCW 36.70A.215 Evaluation component is to coincide with the timing of the periodic
20 CP update deadline, established by RCW 36.70A.130. There is no evidence the State
21 Legislature intended to require counties and cities to conduct this urban density Evaluation
22 and potentially adopt reasonable measures every time there is a comprehensive plan
23 amendment.⁴⁵
24

25 Under Issue 1, Petitioner argues:

26 CPP 1.1.13 provides that the Ridgefield UGA “will have ... densities ... averaging at
27 least 6 units per net residential acre (4.5 gross units per acre).” According to the
28 *Clark County Buildable Lands Report* Ridgefield is only achieving an observed, or
29 permitted, density of 5.2 housing units per net acre. Therefore, Ridgefield is not
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31 ⁴⁴ RCW 36.70A.215 (4).

32 ⁴⁵ Although not applicable to the present case, the Board notes that the Legislature recently amended RCW
36.70A.215 to clarify that Reasonable Measures shall be adopted, if necessary, into the CPP and the county
or city comprehensive plans and development regulations during the next scheduled update of the plans.

1 achieving the residential density standards adopted by the Clark County CPPs. So,
2 the *Buildable Lands Report* documents inconsistencies between actual growth and
3 the City's GMA planning.⁴⁶

4 Petitioner cites as evidence in support of its argument "CPP 1.1.13" which is a CPP
5 included in Clark County's **2016** CP update.⁴⁷ That plan update was adopted one year after
6 completion of the County's **2015** *Buildable Lands Report Evaluation*. Instead of comparing
7 the actual housing density observed during the review period 2006-2014 to the planned
8 housing density adopted in the **2004** CPP, as prescribed by RCW 36.70A.215, Petitioner
9 compares the actual housing density (2006-2014) to a housing density target not adopted
10 until later with the 2016 CP update.⁴⁸ Petitioner's argument that there is an urban density
11 inconsistency fails because Petitioner compares observed densities to a target density set
12 out in the **2016** CP update. That is not the "look back" comparison to previous density
13 targets, as prescribed by RCW 36.70A.215.

14
15 However, more importantly, the Board notes that even if there was a demonstrated
16 urban density inconsistency, Petitioner's argument that "reasonable measures" were
17 required under RCW 36.70A.215 must also fail because Petitioner did not challenge the
18 City's CP update adopted in March 2016. The CP update might arguably have been the
19 time and place for a "reasonable measures" challenge. Instead, Petitioner challenged
20 Ordinance 1229 which rezones a specific parcel of land. RCW 36.70A.215 requires that the
21 urban density Evaluation be conducted at least one year prior to the scheduled periodic
22 comprehensive plan update so that any needed "reasonable measures" can be adopted by
23 the update deadline to cover the succeeding 5-year period. Challenged Ordinance No.
24 1229 was not the City's CP update required by RCW 36.70A.130; rather, Ordinance 1229
25 addressed zoning and capital facilities for 111 acres of annexed property and it was not the
26 vehicle by which to challenge reasonable measures or the lack thereof. So, under Issues 1
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31 ⁴⁶ Futurewise's Prehearing Brief at 5 (August 18, 2017) [footnotes omitted].

32 ⁴⁷ *Id.* at 5, FN 18.

⁴⁸ *Id.*

1 and 2, the Board finds and concludes that Petitioner failed to satisfy its burden of proof to
2 show a violation of RCW 36.70A.215.

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4 **Issue No. 3:**

5 Did Ordinance No. 1229's amendments to the comprehensive plan to identify, plan for, and
6 provide funding for transportation facilities, trails, and parks and the failure to provide for
7 storm water facilities on and near the 2016 Ridgefield UGA expansion and on or near
8 agricultural lands of long-term commercial significance in unincorporated Clark County
9 violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.040(3)(b); RCW
10 36.70A.050(3); RCW 36.70A.060(1)(a), (3); RCW 36.70A.070 (internal consistency), (1), (3),
11 (6); RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1), (3); RCW 36.70A.170; RCW
12 36.70A.210(1), (2), (3); WAC 365-190-040(12); Clark County Countywide Planning Policies
13 3.0.2, 4.1.2, or 6.0.17 because these plans and facilities fail to conserve agricultural lands of
14 long-term commercial significance including protecting these lands from adjacent land
15 uses?

14 **Applicable Laws:**

15 **RCW 36.70A.020 (8) Planning goals.**

16 8) Natural resource industries. Maintain and enhance natural resource-based
17 industries, including productive timber, agricultural, and fisheries industries.
18 Encourage the conservation of productive forestlands and productive agricultural
19 lands, and discourage incompatible uses.

20 **RCW 36.70A.060 Natural resource lands and critical areas**

21 (1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and
22 each city within such county, shall adopt development regulations on or before
23 September 1, 1991, to assure the conservation of agricultural, forest, and mineral
24 resource lands designated under RCW 36.70A.170. Regulations adopted under this
25 subsection may not prohibit uses legally existing on any parcel prior to their adoption
26 and shall remain in effect until the county or city adopts development regulations
27 pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands
28 adjacent to agricultural, forest, or mineral resource lands shall not interfere with the
29 continued use, in the accustomed manner and in accordance with best management
30 practices, of these designated lands for the production of food, agricultural products,
31 or timber, or for the extraction of minerals.

31 Under Issue 3 Petitioner failed to brief alleged violations of RCW 36.70A.030(2), (10);
32 RCW 36.70A.040(3)(b); RCW 36.70A.050(3); RCW 36.70A.070 (internal consistency), (1),

(3), (6); RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1), (3); RCW 36.70A.170; RCW 36.70A.210(1), (2), (3); and WAC 365-190-040(12). Those unbriefed issues are deemed abandoned.⁴⁹

Designation/Conservation of Agricultural Lands

Petitioner claims RCW 36.70A.060(1) applies to both cities and counties that fully plan under RCW 36.70A.040 and that RCW 36.70A.020(8) directs the City to “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries.”⁵⁰ Petitioner contends the 2016 UGA expansion by the County applies to lands which still qualify as ARL and, thus, the City must designate that land as ARL and conserve it consistent with the *Soccer Fields* decision.⁵¹ Petitioner argues Ordinance 1229 does not have policies and regulations protecting ARL properties within and near the UGA and fails to require public notices about adjacent ARLs required by RCW 36.70A.060(1)(b). Thus, Petitioner claims the City lacks policies and regulations to protect designated agricultural lands.⁵²

Petitioner further alleges that capital facilities anticipated by the City in conjunction with the UGA expansion will adversely affect the adjacent designated ARL located in the County. It observes that the UGA expansion will result in a small area of ARL being surrounded on three sides, that one-half of a proposed street right of way is anticipated to encroach on the ARL, and that the CFP contemplates future trails located on the designated ARL.⁵³

⁴⁹ WAC 242-03-590(1) Failure by such a party to brief an issue shall constitute abandonment of unbriefed issues.

⁵⁰ Futurewise’s Prehearing Brief at 23.

⁵¹ *Id.* at 24.

⁵² IR 052, Ordinance No. 1229 at 2 – 3 and attachments in Tab Ord. No. 1229 of the Futurewise’s Petition For Review (June 1, 2017).

⁵³ Futurewise’s Prehearing Brief at 25-27.

1 ***Board Analysis of Designation/Conservation of Agricultural Lands (ARL)***

2 In Issue 3, Petitioner asserts that the 2016 UGA expansion for the City of Ridgefield,
3 along with Clark County's de-designation of former Agricultural Lands of Long-Term
4 Commercial Significance, violated the GMA. The GMA establishes that urban growth
5 boundaries are formally adopted by the County legislative body, after consultation with the
6 City. Petitioner's challenge of the County's action to expand the City's UGA (and attendant
7 ARL de-designation) were previously considered and decided in GMHB No. 16-2-0005c.
8 Petitioner cannot raise in the present case additional challenges of Clark County's GMA
9 actions because this case is limited to a challenge of a City of Ridgefield ordinance only.
10 Accordingly, all arguments relating to actions taken by Clark County cannot be considered
11 by the Board in this case and must be dismissed.
12

13 However, Petitioner also argued that the City has a GMA duty to conserve
14 designated agricultural lands and that its actions or inactions fail to meet that obligation,
15 citing and arguing a violation of RCW 36.70A.060(1).⁵⁴ The City explained it does not have
16 agricultural lands designated or lands zoned for agricultural uses, although the annexed
17 lands do abut designated agricultural lands located in the unincorporated County.⁵⁵ RCW
18 36.70A.060(1) refers to the initial requirement for jurisdictions to, among other things, adopt
19 development regulations to assure the designation and conservation of agricultural lands,
20 prior even to the requirement to adopt comprehensive plans. That statute addresses an
21 initial requirement applicable in 1991 and provides that those regulations should "remain in
22 effect until the county or city adopts development regulations pursuant to RCW
23 36.70A.040". Petitioner fails to cite and then argue any GMA statute, other than RCW
24 36.70A.060, which is applicable to the City's current duty to conserve designated
25 agricultural lands. Petitioner focuses strictly on RCW 36.70A.060(1)(b)'s requirement that
26 jurisdictions are required to place notices in permits issued for plats, short plats,
27 development permits, and building permits located within 500 feet of designated agricultural
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32 ⁵⁴ Futurewise's Prehearing Brief at 24.

⁵⁵ City of Ridgefield Hearing brief at 14.

lands. Under Issue 3, the Board finds and concludes that Petitioner failed to satisfy its burden of proof to show a violation of RCW 36.70A.060.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds the City of Ridgefield is in compliance with the Growth Management Act, and this case is closed.

SO ORDERED this 28th day of November, 2017.

Nina Carter, Board Member

William Roehl, Board Member

Raymond L. Paoella, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁵⁶

⁵⁶ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

Appendix A: Procedural matters

On June 1, 2017, Futurewise (Petitioner) filed a petition for review. The petition was assigned Case No. 17-2-0007. A prehearing conference was held telephonically on June 28, 2017. Petitioner Futurewise appeared through its counsel Tim Trohimovich. Respondent City of Ridgefield appeared through its attorney Janean Parker. Jamie Howsley appeared on behalf of Intervenors RDGB Royal Farms LLC, RDGK Rest View Estates LLC, RDGM Rawhide Estates LLC, RDG River View Estates LLC, and RDGS Real View LLC (RDGB Royal Farms, et al.). Board members William Roehl and Raymond Paoella attended. Board member Nina Carter convened the conference as the Presiding Officer.

On June 15, 2017, RDGB Royal Farms, et al. filed a Motion to Intervene. The Board granted the motion to intervene.⁵⁷ On July 21, 2017, RDGB Royal Farms, et al. filed a Motion to Supplement the Record. The Motion to Supplement was partially granted.⁵⁸

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Futurewise's Prehearing Brief, August 18, 2017 (Petitioner's Brief);
- Response Brief, September 12, 2017 (Response Brief);
- Intervenors' Brief, September 12, 2017 (Intervenors' Brief)
- Reply Brief, September 26, 2017;

Hearing on the Merits

Nina Carter, Presiding Officer, convened the hearing on the merits convened October 3, 2017, in Ridgefield, Washington. Raymond Paoella attended as the assigned Board member to this case. Board Member Will Roehl was ill the day of the hearing and read the written hearing's transcripts. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked

⁵⁷ Prehearing Order and Order Granting Intervention (June 29, 2017) at 3.

⁵⁸ Order on Motion to Supplement the Record (August 4, 2017).

1 questions seeking to thoroughly understand the history of the proceedings, the important
2 facts in the case, and the legal arguments of the parties.

3 At the hearing and pursuant to WAC 242-03-630(4), the City requested the Board
4 take judicial notice of Clark County Resolution 2016-03-01. The City's brief also requested
5 the Board take official notice of this resolution.⁵⁹ The Board takes official notice of Clark
6 County Resolution 2016-03-01.
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8 Petitioner requested the Board take official notice of excerpts from the County
9 Comprehensive Plan in the entire City of Ridgefield Comprehensive Plan. At the Hearing on
10 the Merits the Board took official notice of these documents.⁶⁰
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32 ⁵⁹ City of Ridgefield Hearing Brief at 4 and FN 3.

⁶⁰ HOM Transcript at 11.